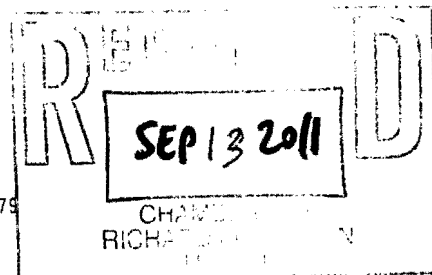


Docket + File

SHEARMAN & STERLING LLP

599 LEXINGTON AVENUE | NEW YORK | NY | 10022-6069

WWW.SHEARMAN.COM | T +1.212.848.4000 | F +1.212.848.7175



rschwed@shearman.com  
212-848-5445

**BY HAND**

Honorable Richard M. Berman  
United States Courthouse  
500 Pearl Street, Room 21B  
New York, New York 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DCC #:  
DATE FILED: 9/13/11

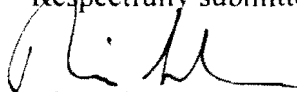
September 12, 2011

Emmet & Co., Inc. and First Manhattan Co. v. Catholic Health East and Merrill Lynch & Co., Inc., No. 11-Civ.-3272 (RMB) (AJP)

Dear Judge Berman:

On behalf of defendant Catholic Health East ("CHE"), we write in response to the August 31, 2011 letter from counsel for plaintiffs to Your Honor. Although we have not seen the proposed amendment or motion for leave to amend, we anticipate that we will oppose the amendment as futile. For many of the reasons set forth in the letters of September 2, 2011 to Your Honor from counsel for CHE and counsel for Merrill Lynch & Co., Inc., plaintiffs cannot state a claim against Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") or any other defendant. Absent a claim against MLPFS, the Court will retain diversity jurisdiction.

Respectfully submitted,

  
Richard F. Schwed

cc: Hon. Andrew J. Peck (by hand)  
Aaron H. Marks, Esq. (via email)  
Luke A. Connelly, Esq. (via email)

ABU DHABI | BEIJING | BRUSSELS | DUSSELDORF | FRANKFURT | HONG KONG | LONDON | MILAN | MUNICH | NEW YORK  
PALO ALTO | PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

SHEARMAN & STERLING LLP IS A LIMITED LIABILITY PARTNERSHIP ORGANIZED IN THE UNITED STATES UNDER THE LAWS OF THE STATE OF DELAWARE, WHICH LAWS LIMIT THE PERSONAL LIABILITY OF PARTNERS